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UNITED STATES OF AMERICA

8 UNITED STATES DISTRICT COURT

9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) No. CR 09-1004-MMM
11)
Plaintiff,) GOVERNMENT'S RESPONSE TO THE
12) SENTENCING POSITION PAPER FILED ON
v.) BEHALF OF DEFENDANT PAUL CHALLENGER
13)
PAUL CHALLENGER,) Sentencing date: 3/21/11
14) Time: 1:15 p.m.
Defendant.)
15) [Courtroom of the Honorable
_____) Margaret M. Morrow]

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I.

INTRODUCTION

This case stems from defendant Paul Challender's involvement as a valued member of Quest4More, an Internet Bulletin Board that served as a forum for Challender and others to post child pornography and receive child pornography in return from the Board's other members. As the postings to this Board confirm, the Board attracted a group whose vile interests focused on collecting, posting, and masturbating to the most graphic images imaginable of children being sexually abused, as well as posting lewd comments in response to such images that gleefully promoted the idea of taking pleasure in the pain inflicted on extremely young children who were the subject of sexual torture.

Challender was one of the most active and, frankly despicable, participants of this Board. As a member of this Board, Challender was involved in at least the following activity:

* Challender made at least 289 posts to this Board (totaling over 10 percent of all of the posts to the Board), including posts in which he discussed his strong interest in "nepi" (child pornography images featuring infants and toddlers), the enjoyment he derived from watching children in pain as a result of being sexually tortured, and fantasies he had about raping toddlers;

* Challender posted links to child pornography to the Board, including links to images that featured infants. These posts were not only accessed by the other members of Quest4More; they drew praise from the other pedophiles who populated the

1 Board and who supplied Challender with child pornography on
2 numerous occasions at his request; and

3 * Challender also participated in the recruitment of
4 others to join the Board and share their child pornography with
5 him and the other members, as evident by his successful effort to
6 lure an undercover ICE agent into joining the Board at a time
7 when Challender obviously believed the agent was a like-minded
8 person with an interest in sharing child pornography.

9 As a result of Challender's appalling conduct in this case -
10 - which also included amassing his own collection of hundreds and
11 images and hundreds of movies featuring shockingly repulsive
12 images of child pornography at his home in Michigan -- the
13 Probation Office has recommended that defendant be sentenced to
14 20 years imprisonment to be followed by a lifetime of supervised
15 release.

16 In its Sentencing Position Paper, filed February 28, 2011,
17 the government concurred, with one minor variance, with the
18 Sentencing Guidelines calculations reached by the Probation
19 Office in its Presentence Report ("PSR"), but it recommended that
20 the Court impose the following sentence: (1) a below-guidelines
21 term of 151 months imprisonment; (2) a lifetime period of
22 supervised release; and (3) payment of a \$100 special assessment.

23 That same day, Challender filed his sentencing position
24 paper, arguing that (1) the Presentence Report ("PSR")
25 incorrectly applied a five-level upward enhancement to his
26 Sentencing Guideline range, pursuant to U.S.S.G. § 2G2.(b)(3)(B),
27 because he purportedly did not distribute child pornography on
28 the Quest4More at all, and thus did not distribute child

1 pornography with an expectation that he would receive child
2 pornography in return for doing so;¹ (2) the Sentencing
3 Guidelines overstate the seriousness of his offense; and (3) a
4 jumbled of purportedly mitigating facts justify the imposition of
5 sentence near the minimum sentence Challenger faces as a result
6 of his crime of conviction.² Each of these claims is without
7 merit.

8 As explained in detail below, when Challenger entered his
9 guilty plea in this case, he admitted to those facts necessary to
10 trigger the distribution enhancement that he now claims should
11 not apply to his case. Moreover, Challenger's purported reasons
12 why he should not receive this enhancement relating to the
13 distribution and receipt of child pornography are based on
14 completely inaccurate assertions relating to his criminal conduct
15

16 ¹ Challenger also contests the application of the
17 "vulnerable victim" enhancement to his Sentencing Guidelines
18 range, pursuant to U.S.S.G. § 3A1.1(b)(1). As the government
19 indicated in its initial sentencing brief, it is not seeking the
20 application of that enhancement in this case. However, the
21 government believes -- and the evidence overwhelmingly shows --
22 that Challenger should receive a five level increase to his
23 Sentencing Guideline range to account for the number of child
24 pornography images and videos that Challenger possessed both as a
25 member of the Quest4More group and at his residence on the day he
26 was arrested. See U.S.S.G. § 2G2.2(b)(7). Challenger fails to
27 account for this enhancement at all in his analysis and does not
28 and cannot properly object to its applicability in his case.
Accordingly, the Sentencing Guideline range advocated by
Challender in his Sentencing Position Paper is at least five
levels lower than where it plainly should be.

26 ² Challenger faces a 60 month mandatory-minimum sentence
27 in this case in light of pleading to his involvement in the
28 receipt and distribution of child pornography. At various points
in his sentencing position paper, he argues that he should
receive a sentence of either 70 or 72 months.

1 in this case, namely, his claims (a) that he never successfully
2 posted child pornography to the Quest4Board and merely served as
3 a "commentator" on the Board; and (b) that did not have child
4 pornography he could trade with customers of the Quest4More site.
5 In fact, Challenger posted links to child pornography, including
6 images of infants, that his depraved colleagues acknowledged the
7 receipt of through their posts to the Board. Indeed,
8 Challenger's postings in this regard once garnered a remark from
9 defendant Michael Pharis that Challenger's postings featured
10 children that were even "a little to [sic] young for [his]
11 taste."³ Moreover, there is no truth to the claim that
12 Challenger did not have child pornography in his possession that
13 he could share with the other members of the Quest4More Board.
14 As noted in the PSR, Challenger was found in the possession of a
15 computer on the day of his arrest that contained hundreds of
16 images and hundred of movies featuring child pornography,
17 including images of infants, toddlers, and preteens being
18 sexually tortured, as well as children's clothing and diapers
19 that Challenger stated that he was using as a sexual aid. (PSR
20 ¶¶ 16, 19).

21 Furthermore, the mitigating facts that Challenger cites in
22 his sentencing position paper, to the extent they are mitigating
23 at all, are substantially outweighed by the aggravating facts of
24 this case, including the seriousness of Challenger's offense, his
25

26 ³ Ironically, Challenger argues in his sentencing brief
27 that he should be treated more leniently than this very defendant
28 who Challenger managed to outdo on the Quest4More Board through
his depravity.

1 disturbing sexual obsession with extremely young children, and
 2 the need to protect the public from this depraved defendant. As
 3 a result, the mitigation cited by Challender in his sentencing
 4 brief, at best, justifies the 151 month sentence recommended by
 5 the government as opposed to the 240 month sentence recommended
 6 by the Probation Office.

7 II.

8 ARGUMENT

9 A. CHALLENGER'S OBJECTION TO THE APPLICATION OF THE
 10 DISTRIBUTION ENHANCEMENT RELIED UPON BY THE PROBATION OFFICE
 11 AND THE GOVERNMENT TO CALCULATE HIS SENTENCING GUIDELINE
 12 RANGE IS WITHOUT MERIT

13 Section 2G2.2(b)(3)(B) of the United States Sentencing
 14 Guidelines provides that a defendant's base offense level in a
 15 child pornography case should be increased by five offense levels
 16 if his offense involved the "[d]istribution for the receipt, or
 17 expectation of receipt, of a thing of value, but not for
 18 pecuniary gain . . ." Both the Sentencing Guidelines themselves,
 19 as well as the Ninth Circuit, have made it clear that trading
 20 child pornography for other child pornography is "distribution"
 21 for a "thing of value" within the meaning of § 2G2.2(b)(3)(B).
 22 See Application Note 1 to U.S.S.G. § 2G2.2 (noting that the
 23 bartering of child pornography constitutes the "distribution for
 24 receipt, or expectation of receipt, of a thing of value, but not
 25 for pecuniary gain"); United States v. Phillips, 2009 WL 1185217
 26 *3 (9th Cir. 2009) (holding that trading child pornography for
 27 access to other child pornography triggers the enhancement called
 28 for under § 2G2.2(b)(3)(B)); United States v. Laney, 189 F.3d
 954, 961-61 (9th Cir. 1999) (same). Here, there is no doubt that

1 Challenger's activities on the Quest4More bulletin board involved
 2 the bartering of child pornography. The very purpose of this
 3 bulletin board was to provide people like Challenger with a forum
 4 to trade access to child pornography with one another, and the
 5 evidence -- including Challenger's own admissions during his
 6 change of plea -- is overwhelming that Challenger distributed
 7 child pornography on the Quest4More bulletin board in conjunction
 8 with his successful efforts to receive child pornography in
 9 return from the other members of the Quest4More Board.⁴

10 1. When Challenger Entered His Guilty Plea, He Admitted
 11 the Very Conduct That Triggers The Distribution
 12 Enhancement Recommended By the Probation
 13 Office and the Government

14 Challenger's objection to the application of the
 15 distribution enhancement recommended by the Probation Office and
 16 the government to his conduct is particularly head-scratching
 17 because, when Challenger entered his guilty plea, he admitted
 18 those facts necessary to establish this enhancement.
 19 Specifically, Challenger conceded as a part of the factual basis

20 ⁴ The Sentencing Guidelines provide for a series of
 21 different possible enhancements in cases where a defendant was
 22 involved in the distribution of child pornography. The minimum
 23 enhancement applicable to a defendant engaged in the distribution
 24 of child pornography is two levels. See U.S.S.G.
 25 § 2G2.2(b)(3)(F). Accordingly, if this Court were to conclude
 26 that Challenger was engaged in the distribution of child
 27 pornography on the Quest4More Board, but was not involved in
 28 distribution "for the receipt, or expectation of receipt, of a
 thing of value" (a conclusion disproven by the facts set forth
 below), the offense level recommended by the government would
 only decrease from offense level 37 to offense level 34. This
 drop in offense level would lower Challenger's applicable
 Sentencing Guideline range from 210 to 262 months to 151 to 188
 months, a range that encompasses the government's recommended
 sentence.

1 for his guilty plea that: "[D]efendant Challenger posted child
2 pornography images and videos on the Quest4More message board
3 during the time period he was a member and, in return, Challenger
4 received and possessed child pornography images and videos that
5 were posted by other members of this message board."

6 (See Exhibit A (Challender's Plea Agreement at pp. 20-21)). As
7 these facts Challenger admitted to were true, and fully support
8 the imposition of the enhancement called for under U.S.S.G.
9 § 2G2.2(b)(3)(B), this five-level enhancement recommended by the
10 Probation Office and the government should be used to calculate
11 Challenger's final adjusted offense level under the Sentencing
12 Guidelines.

13 2. Challender's Posts on the Quest4More Board, and the
14 Responses to His Posts, Confirm that Challenger
15 Successfully Distributed Child Pornography, Including
Child Pornography Featuring Infants, to the Other
Members of the Quest4More Board

16 In his sentencing position paper, Challenger asserts that
17 the Probation Office and government have incorrectly applied the
18 distribution enhancement at issue because (1) his role on the
19 Quest4More Board was purportedly limited to that as an "observer"
20 and "commentator" because he never successfully posted child
21 pornography to the Board (see Challenger's Sentencing Position
22 Paper at pp. 7-8, 11); and (2) he did not post any child
23 pornography on the Quest4More Board because "he had no child
24 pornography to share with Quest4More members." (See id. at p.
25 7). Both of these assertions underlying Challenger's argument
26 are flat wrong.

27 First, it is clear that Challenger's representation to this
28 Court that "he had no child pornography to share with Quest4More

1 members" is inaccurate. As noted in the PSR, Challenger was in
2 the possession of a computer on the day he was arrested that
3 contained hundreds of images and hundreds of videos of child
4 pornography. (PSR ¶ 16).

5 Second, Challenger's posts, and the responses from
6 Quest4More members to those posts, confirm that Challenger shared
7 child pornography with the members of the Quest4More Board who
8 had shared child pornography with him. Specifically, a review of
9 Challenger's posts confirms that he posted links to child
10 pornography on the Quest4More Board, including images of babies,
11 and other members of the Board successfully accessed this child
12 pornography distributed by Challenger. By means of example only:

13 * On May 17, 2008, Challenger, utilizing the screen name
14 "hilljoe," posted a message entitled "babies, sweet fuck toys" to
15 the "nepi" fora on Quest4More, which was an area of the Board
16 reserved for the posting of child pornography featuring infants
17 and toddlers. This message included the text "you will be
18 wanking to these," and included a link to child pornography. The
19 following day, defendant Pharis, utilizing the screen name
20 "jaslovesfootball," entered the following post, confirming that
21 he had accessed the link to child pornography posted by
22 Challenger: "thanks joe, alittle to young for my taste, but you
23 the man, so how are you, what is going on with hello,⁵ so any
24

25 ⁵ The government believes that the term "hello" as used
26 in this message refers to Google Hello, an instant messaging
27 service that was specifically designed to allow individuals to
28 share photographs with each other, and a service that individuals
like Challenger and Pharis exploited to send child pornography to
each other. Google ended this service on May 15, 2008, three
days prior to this post on Quest4More by Pharis.

1 ways, where will we meet now, well I will do my best to talk to
2 you tomorrow, have a super day. hello to every body else." (See
3 Exhibit B);

4 * On December 28, 2007, Challenger posted a message
5 entitled "yummy" on the Board. This message included the text
6 "just a few pics" and a link to child pornography that contained
7 the word "babycrzy" embedded in the link. Two days after
8 Challenger posted this message and link, a Quest4More member
9 known as "DanDLion," acknowledging that he had accessed child
10 pornography from this link posted by Challenger, posted a message
11 reading, "thanks, some nice little cunts there." (See Exhibit
12 C); and

13 * On December 16, 2007, Challenger posted a message
14 entitled "hot, realy [sic] hot" on the Quest4More Board. This
15 message included a link to a child pornography website and a
16 password to that site, as well as a message from Challenger in
17 which he reveled in the joy that Quest4More members would have
18 masturbating to the images he was supplying to them through his
19 post. In response to his post, a Quest4More member known as
20 "testoryl128" entered a post that read as follows: "WOW what can
21 I say, just were [sic] do you get these site from . . . well my
22 cock is going to get VERY sore after going through all that lot.
23 thabks [sic] for that link, you are a top star here." (See
24 Exhibit D).

25 These posts, as well as others, confirm that Challenger, a
26 so-called "top star" on the Quest4More Board, was, in fact,
27 successfully distributing child pornography to other members of
28 the Board. Other posts, including posts cited by the government

1 in its initial sentencing brief, confirm that Challender received
2 child pornography from others as a member of the Board.
3 Accordingly, in Challender's case, the Quest4More Board operated
4 exactly as it was clearly intended to operate, as a forum where
5 Challender provided members of the Board with some of the child
6 pornography that he had access to, and received samples of the
7 collections of child pornography amassed by other members of the
8 Board in return. Therefore, the five-level enhancement called
9 for under U.S.S.G. § 2G2.2(b)(3)(B) should be imposed in his
10 case.⁶

11 B. CHALLENGER'S OTHER CRITICISMS CONCERNING THE
12 APPLICATION OF THE SENTENCING GUIDELINES HAVE NO MERIT

13 In a refrain that is now repeated by almost every defendant
14 in a child pornography prosecution, Challender also asserts that
15 the Sentencing Guidelines utilized in child pornography cases

16 ⁶ The cases cited by Challender in his sentencing brief
17 should not alter this outcome, as they addressed mechanisms for
18 distributing child pornography much different than the Quest4More
19 bulletin board. For instance, United States v. Bastian, 603 F.3d
20 460 (8th Cir. 2010), involved a defendant who was using a peer-
21 to-peer file program known as Limewire to download child
22 pornography, a program in which a user may control whether he is
23 giving access to the child pornography on his computer to others
24 on the network and in which an unsophisticated computer user may
25 not be aware of whether or not he is providing such access to
26 others. In such cases, courts have recognized that the
27 enhancement under § 2G2.2(b)(3)(B) may not apply unless the
28 government can establish that the defendant knew that by using a
file-sharing network, he could download files from others who
could also access his files. Id. at 466. This type of scenario
bears no relationship to how the Quest4More bulletin board
operated. As the Probation Office correctly notes in its
addendum to the Presentence Report, the very function of the
board was to provide a forum for the members to trade child
pornography with one another. Moreover, as illustrated above,
defendant's posts confirm that he was utilizing the Quest4More
bulletin board for that very purpose.

1 should be accorded little weight because they were purportedly
2 not the product of careful study by the Sentencing Commission.
3 While some courts have accepted the argument that the Sentencing
4 Guidelines should not be accorded substantial weight in the "mine
5 run" child pornography prosecution, this view is hardly
6 universal, and other courts have provided powerful reasons why
7 district courts should give deference to the Sentencing
8 Guidelines in child pornography cases. See e.g., United States
9 v. Cunningham, 680 F. Supp. 2d 844, 847-53 (N.D. Ohio 2010)
10 (rejecting the argument that the child pornography Sentencing
11 Guidelines are not entitled to deference and noting that the
12 child pornography guidelines have resulted from efforts by the
13 Sentencing Commission to use empirical data and its own expertise
14 to craft appropriate guidelines).

15 Regardless of what particular weight one attributes to the
16 Sentencing Guidelines in a child pornography case, there is
17 little doubt that child pornography offenses are serious crimes
18 that merit serious punishment. Moreover, given the fact that
19 this case does not represent the "mine run" child pornography
20 case, and the application of the § 3553(a) factors in their
21 totality justify the 151 month sentence recommended by the
22 government, even if this Court were to give little deference to
23 the application of the Sentencing Guidelines to this case, the
24 sentence recommended by the government is still the appropriate
25 sentence.

26 C. THE ARGUMENTS CHALLENGER OFFERS TO MITIGATE HIS HORRIFIC
27 CONDUCT AND IN SUPPORT OF LENIENCY AT SENTENCING DO NOT
28 JUSTIFY A SENTENCE NEAR THE MINIMUM SENTENCE HE FACES IN
 THIS CASE OR, FOR THAT MATTER, ANY SENTENCE OF LESS THAN 151
 MONTHS

1 In his sentencing position paper, Challenger offers a series
2 of reasons why he should receive a sentence close to the
3 mandatory-minimum sentence he faces in this case. Specifically,
4 Challenger asserts that he is entitled to substantial leniency at
5 sentencing in the form of a sentence less than one-third that
6 recommended by the Probation Office because (1) he had a
7 difficult childhood and may have been the victim of sexual abuse
8 as a child; (2) he has been gainfully employed as an adult and
9 has been actively involved in political causes; (3) he is
10 apologetic for what he has done and a sentence near the minimal
11 term allowed will purportedly serve as "a deterrent and
12 sufficient punishment" for Challenger; (4) educational and
13 training opportunities that await him in prison justify a lesser
14 sentence for some unspecified reason; and (5) imposing a 151
15 month sentence would somehow result in an unfair disparity when
16 compared to the 180 month sentence received by defendant Pharis.
17 To the extent any of this information constitutes mitigating
18 evidence that favor any leniency in this case, it pales in
19 comparison to the aggravating facts of this case and does not
20 justify the imposition of a sentence less than the 151 month
21 sentence recommended by the government, let alone the imposition
22 of a sentence hugging the minimum term Challenger must serve as a
23 result of his conviction in this case.

24 First, Challenger's claim that he should receive substantial
25 leniency because he purportedly endured a traumatic childhood is
26 entitled to little, if any, weight. To the extent that this
27 Court can even accept that the incidents Challenger cites from
28

1 his childhood actually occurred,⁷ they occurred more than four
2 decades prior to the conduct at issue in this case. Accordingly,
3 it is difficult to see how this constitutes persuasive evidence
4 to justify lowering Challenger's sentence to near the mandatory-
5 minimum term for an offense as serious as Challenger's offense.

6 Second, Challenger's claim that he should receive
7 substantial consideration for the fact that he held a job as an
8 adult and has periodically served as a political activist lacks
9 merit as well. The exact accomplishments that Challenger cites
10 in this portion of his sentencing position paper were considered
11 by the Probation Office when it made its sentencing
12 recommendation in this case (see PSR at ¶¶ 49-50), and the
13 Probation Office still concluded that Challenger should receive
14 the maximum penalty available for his offense of conviction.
15 Moreover, Challenger's accomplishments as an adult are far less
16 remarkable than the fact he has, by his own admission, collected
17 child pornography for at least the past eight years and developed
18 a sexual interest in baby boys as an adult in his 50s. (See PSR
19 at ¶ 19).

20 Third, Challenger's self-serving claims that he is
21

22 ⁷ For instance, the sensational claim that Challenger may
23 have been the victim of sexual abuse as a child is a claim that
24 is supported by little in the way of reliable evidence. No
25 witness, including Challenger himself, can supply any detail
26 concerning any occasion when Challenger was purportedly the
27 victim of child molestation. Instead, in support of this claim,
28 Challenger, and Challenger alone, reports that he has a "some
vague memory" of a pedophilic uncle who touched him sexually when
he was four years old. (Challender's Sentencing Position Paper
at p. 13). Indeed, it appears that Challenger's sentencing marks
the first time this claim has ever come to light.

1 remorseful and now motivated to alter the long-standing behavior
2 that led to his conviction in this case do not merit the
3 substantial variance between the sentence he seeks and that
4 recommended by the Probation Office. The government does not
5 dispute that in the 17 months since Challender was arrested that
6 he regrets the trouble he is in and, like many defendants, claims
7 that he does not want to repeat his past behaviors.

8 Unfortunately, these self-serving claims within the first year
9 and one-half of Challender's incarceration are hardly reliable
10 predictors of the future danger Challender poses, particularly
11 given his extensive and long-standing involvement in committing
12 the offenses at issue and the nature of the urges that typically
13 give rise to the types of offenses committed by Challender.

14 Moreover, Challender's generic claim that "72 months"
15 constitutes "sufficient punishment" for his offense fails to
16 recognize the seriousness of his offense and those aggravating
17 facts that have caused the Probation Office to recommend that
18 Challender serve a 20 year term of imprisonment. (Challender's
19 Sentencing Position Paper at p. 16). This perhaps is not
20 surprising given that Challender's sentencing position
21 dramatically understates or misunderstands the role that he
22 played as a member of the Quest4More Board and, at times, makes
23 it sound like Challender's posts on the Board were the equivalent
24 of what one might say to a friend on Facebook. (See Challender's
25 Sentencing Position Paper at p. 12). A sentence of 70 months or
26 72 months would, in fact, substantially minimize the seriousness
27 of defendant Challender's conduct, which is well beyond the pale
28 of that at issue in the "mine run" child pornography case.

1 Fourth, there is no merit to Challenger's claim that the
2 mental health counseling that he will receive in prison justifies
3 slashing his sentence to near the minimum term of imprisonment
4 this Court must impose. A review of the posts that Challenger
5 made on the Quest4More bulletin board leaves little doubt that
6 Challenger poses a danger to the community and, more
7 particularly, an extreme danger to children. No psychologist,
8 including the paid expert Challenger has enlisted, can assure
9 this Court that any mental health treatment Challenger receives
10 while in custody will alleviate that danger and negate the
11 possibility that Challenger will someday revert to the habit of
12 viewing extreme forms of child pornography that he has developed
13 over at least the past eight years. Moreover, even if such an
14 assurance were possible, the punishment Challenger merits for the
15 serious offenses he committed in this case justify the sentence
16 recommended by the government.

17 Lastly, Challenger's claim that he is somehow entitled to a
18 sentence only 39% as long as the sentence imposed on defendant
19 Pharis' is legally without basis and factually without support.
20 Contrary to the central premise underlying Challenger's argument
21 in this regard, a sentencing judge is under no obligation to
22 equalize sentences among coconspirators or codefendants. See,
23 e.g., United States v. Monroe, 943 F.2d 1007, 1017 (9th Cir.
24 1991) (rejecting the argument that a district court must provide
25 equalized sentences among codefendants pursuant to the Sentencing
26 Guidelines or 18 U.S.C. § 3553(a)(6); United States v. Endicott,
27 803 F.2d 506, 510 (9th Cir. 1986) (recognizing that "[i]t is
28 within the discretion of the trial court to impose disparate

1 sentences upon codefendants" and that a disparity in the
2 sentences imposed upon codefendants does not indicate that the
3 sentencing judge has abused his discretion or that appellate
4 review of that decision is warranted). This is because 18 U.S.C.
5 § 3553(a)(6), the provision that requires courts to consider
6 "disparities" at sentencing between similarly-situated
7 defendants, was enacted for the purpose of promoting national
8 uniformity at sentencing among equally-situated defendants and
9 not, as Challenger pretends in his sentencing position paper, to
10 achieve sentencing parity among codefendants in a particular
11 case. United States v. Saeteurn, 504 F.3d 1175, 1181 (9th Cir.
12 2007) (holding that the goal of uniformity set forth in
13 § 3553(a)(6) relates to a nationwide uniformity based upon the
14 sentencing guidelines, not the uniformity of co-defendants in a
15 particular case); see also United States v. Big Leggins, 2009 WL
16 605185 ** 2 (9th Cir. 2009) (holding that the difference in
17 between the sentences imposed between two codefendants did not
18 make the sentence of the more harshly punished defendant
19 substantively unreasonable).

20 Moreover, while it is clearly true that Pharis has a
21 criminal history that Challenger lacks, it is not true that
22 Challenger should be the beneficiary of a sentence substantially
23 lower than that imposed on Pharis, as Challenger's activities on
24 the Quest4More Board were equally as vile as Pharis' activities,⁸

26 ⁸ In Challenger's case the government also seized a
27 computer that contained hundreds of images and videos containing
28 extreme forms of child pornography. While the government seized
some computer media in Pharis' case, this evidence was suppressed
and, before its suppression, Pharis indicated that the government

1 Challenger's sexual obsession with toddlers and babies is far
2 more aggravating than any of Pharis' deviant interests, and
3 Challenger's eight-year involvement in committing child
4 pornography offenses similarly indicates long-term involvement in
5 the sexual exploitation of children. Accordingly, even if this
6 Court were required to account for a disparity in the sentences
7 of Challenger and Pharis - which it is not -- the disparity of 29
8 months recommended by the government here is justified, while the
9 disparity of 110 months recommended by Challenger is not.

10 III.

11 CONCLUSION

12 For each of the foregoing reasons, the government maintains
13 its recommendation that defendant Challenger be sentenced to 151
14 months imprisonment to be followed by a lifetime period of
15 supervised release.

16 DATED: March 7, 2011

17 Respectfully submitted,

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19 /s/
20 ROBERT E. DUGDALE
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